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10/087,628	03/01/2002	Chester Kolton	38-94	3691

7590

07/15/2003

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EXAMINER

NGUYEN, TAI T

ART UNIT

PAPER NUMBER

2632

DATE MAILED: 07/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/087,628

Applicant(s)

KOLTON ET AL.

Examiner

Tai T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-13 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:

Page 1, line 12, "Patent No. 5,998,462" should read as --Patent No. 5,988,462--.

Page 4, line 6, "apertures 22 and 24" should read as --apertures 26 and 28--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 5-8, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiesewetter et al. (US 6,218,944) in view of Ohlhausen (US 3,756,200).

**Regarding claim 1**, Kiesewetter et al. disclose an EAS marker assembly (figure 2) comprising a housing (10, 11) defining an interior cavity (12) and an EAS marker (13, col. 3, line 56 through col. 4, line 10). Kiesewetter et al. disclose the instant claimed invention except for: the housing defining first and second tabs extending outwardly, each of the first and second tabs defining an aperture extending therethrough. Kiesewetter et al. disclose that the label can be attached to intended article by gluing,

mounting or sewing (col. 3, lines 61-64). Ohlhausen teaches a tick eradicator having a housing (40) having a first and second tabs (41) extending outwardly, wherein each of the first and second tabs defining an aperture extending therethrough (figure 3; col. 2, lines 30-40) for securing the housing (40) to the animal. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize the housing as taught by Ohlhausen into the system as disclosed by Kiesewetter et al. for the purpose of attaching/stabilizing the housing onto a protect garment.

**Regarding claim 2**, Kiesewetter et al. disclose the housing comprising of first and second housing members (10, 11) in mutually confronting relation to define an interior cavity therein (figure 2) but fail to disclose the first and second members each defining the first and second tabs extending outwardly thereof. Ohlhausen teaches the housing (40) having a first and second tabs (41) extending outwardly thereof (figure 3; col. 2, lines 30-40) for securing the housing (40) to the animal. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use the first and second tabs as taught by Ohlhausen with the first and second housing members (10, 11), as modified in claim 1 above, for the purpose of attaching the EAS marker into the monitored object.

**Regarding claims 5-6**, as shown in figure 4, Ohlhausen further teaches a joiner (50) having a shaft portion of diameter equal to a diameter of the tab aperture and a locking device securable the joiner (col. 2, lines 41-45).

**Regarding claims 7-8**, Kiesewetter et al. disclose an EAS marker assembly (figure 2) comprising a housing (10, 11) defining an interior cavity (12) and an EAS

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marker (13, col. 3, line 56 through col. 4, line 10). Kieseewetter et al. disclose the instant claimed invention except for: the housing defining first and second tabs extending outwardly, each of the first and second tabs defining an aperture extending therethrough, an article of manufacture defining a first and second aperture extending therethrough, and a joiner device extending through the aperture of the first and second tabs and securing the EAS marker assembly to the article of manufacture. Ohlhausen teaches a tick eradicator having a housing (40) having a first and second tabs (41) extending outwardly, wherein each of the first and second tabs defining an aperture extending therethrough (figure 3; col. 2, lines 30-40) and a joiner (50) having a shaft portion of diameter equal to a diameter of the tab aperture and a locking device securable the joiner (col. 2, lines 41-45). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize the housing as taught by Ohlhausen into the system as disclosed by Kieseewetter et al. for the purpose of attaching/stabilizing the housing onto a protect garment. Furthermore, an article of manufacture is not mentioned/disclosed but it would have been obvious to a person having ordinary skill in the art at the time the invention was made to know that the housing having a first and second tabs (41) extending outwardly, wherein each of the first and second tabs defining an aperture extending therethrough and a joiner (50) having a shaft portion of diameter equal to a diameter of the tab aperture and a locking device securable the joiner as taught by Ohlhausen can be used for securing the housing to any article of manufacture for the purpose of monitoring/tracking the unauthorized removal.

**Regarding claims 11-12**, Kieseewetter et al. disclose an EAS marker assembly (figure 2) comprising a housing (10, 11) defining an interior cavity (12) and an EAS marker (13, col. 3, line 56 through col. 4, line 10). Kieseewetter et al. disclose the instant claimed invention except for: the housing defining first and second tabs extending outwardly, each of the first and second tabs defining an aperture extending therethrough and a locking device secured with the first tab. Ohlhausen teaches a tick eradicator having a housing (40) having a first and second tabs (41) extending outwardly, wherein each of the first and second tabs defining an aperture extending therethrough (figure 3; col. 2, lines 30-40) and a locking device securable the joiner (figure 4, col. 2, lines 41-45). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize the housing having tabs and the locking device as taught by Ohlhausen into the system as disclosed by Kieseewetter et al. for the purpose of attaching/stabilizing the housing onto a protect garment.

**Regarding claim 13**, refer to claims 11-12 above.

4. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kieseewetter et al. (US 6,218,944) in view of Ohlhausen (US 3,756,200) as applied to claim 1 above, and further in view of Feibelman (US 6,433,686).

**Regarding claims 3-4**, as shown in figure 3, Ohlhausen teaches the housing having first and second tabs extend to respective free tab ends but fails to disclose the housing defines hinge section at the ends of the first and second tabs opposite the free

ends thereof. Feribelman teaches a tag (10) having a first and second tabs (18, 30) extend to respective free tab ends, wherein the first and second define hinge sections (36a, 36b) at ends of the first and second tabs opposite the free ends thereof (figure 3; col. 3, lines 3-67). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use tabs having hinge section ends as taught by Feibelman into the system as disclosed by Kiesewetter et al., as modified, for the purpose of providing a flexibility mounting of the tabs onto the garments.

#### ***Allowable Subject Matter***

5. Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kolton et al. (US 6,304,184), Merseur et al. (US 5,799,425), Anderson, III et al. (US 4,510,490), and Brooker et al. (US 4,026,290).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tai T. Nguyen whose telephone number is (703) 308-0160. The examiner can normally be reached on Monday-Friday from 7:30am-5:00pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel J. Wu, can be reached at (703) 308-6730. The fax phone numbers

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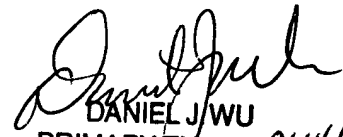
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for the organization where this application or proceeding is assigned are (703) 305-3988 for regular communications and (703) 305-3988 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

July 14, 2003

Tai T. Nguyen  
Examiner  
Art Unit 2632

  
DANIEL J. WU  
PRIMARY EXAMINER 7/10/03